IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No.13410 of 2004
Date of decision, November 26, 2007

Harjit Singh

..... Petitioner

Versus

1. **State of Punjab through its Secretary Cooperative Societies, Civil Secretariat, Punjab, Chandigarh.**
2. **The Financial Commissioner(C), Punjab, Mini Civil Secretariat, Punjab, Chandigarh.**
3. **The Registrar, Cooperative Societies, Punjab, Chandigarh.**

..... Respondents

CORAM: HON'BLE MR. JUSTICE J.S. KHEHAR AND
HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Amandeep Singh, Advocate,
for the petitioner.

Mr. Gurminder Singh, Additional Advocate General, Punjab for the respondents.

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Sham Sunder, J.

The petitioner was initially appointed as Inspector, Co-operative Societies vide order dated 11.4.1975, and he joined his duties on 15.4.1975. Thereafter, he was promoted as Assistant Registrar, vide order dated 4.5.2001 (Annexure P-2). The petitioner is governed by the Punjab State Co-operative Service Class II Rules, 1958. According to Rule 9(b) every member of the service, shall unless exempted by the Government, pass by the higher standard the departmental examination, in accounts, within a period of two years, which is further extendable by the Government. It was stated that under Rule 13 of the said Rules, relaxation can be given, in case of women candidates, and under Rule 17, the

Government is vested with the general power, to relax the operation of any of the Rules, in case the same causes, hardship, in any particular case. It was further stated that the petitioner met with an accident, and suffered multiple injuries, on his body. Resultantly, his disability was more than 40%. In this respect, a certificate dated 20.3.2001 (Annexure P-3) was issued by the office of the Civil Surgeon, Patiala. It was further stated that the petitioner having suffered injuries, he being a natural left hander, was unable to undertake the departmental examination, as his hand was very slow, in writing, and the grip was also very weak. The petitioner was given one more year, by extending the period for passing the departmental examination, in accounts. Since the petitioner could not write better and appear in the examination, even after the extended period, he moved an application on 27.5.2004 to the Registrar Co-operative Societies, Punjab, seeking exemption from passing the aforesaid examination. The Finance and Co-operation Minister, Punjab, approved the request of the petitioner, taking into consideration his record and the medical report, vide order dated 27.5.2004. Since the concerned Minister approved the request, the formal order was to be passed by respondent No.3, in this regard. After the approval was granted by the Government, and the Minister In-charge, the petitioner was never heard by the concerned authorities though he was expecting the formal orders, regarding exemption. It was further stated that without granting any opportunity of hearing, and without looking into the facts of the case of the petitioner, as also the medical certificate, produced by him, he was reverted vide order dated 29.7.2004 (Annexure P-7). It was further stated that one Darshan Singh, who was promoted to the post of Assistant Registrar, from the post of Inspector on 29.5.2001, also suffered

from an ailment and by relaxing the operation of Rules, he was exempted from passing the departmental examination. One more officer, in the name of Darshan Singh was also granted exemption from passing the departmental examination. It was further stated that the order of reversion of the petitioner, was illegal, un-constitutional and in violation of the principles of natural justice, that the respondents adopted a policy of pick and choose, by interpreting Rule 17 of the Rules ibid, and thereby the petitioner was discriminated vis-a-vis the similarly situated persons. Accordingly, the instant petition, for issuance of a writ, in the nature of certiorari, setting aside the order dated 29.7.2004 (Annexure P-7) was filed.

2. The respondents, in their written statement, admitted that the petitioner was appointed as Inspector. It was also admitted that he was promoted as Assistant Registrar. It was stated that the petitioner was governed by the Punjab State Cooperative Service Class II Rules, 1958, and the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994. It was stated that an application dated 24.2.2003 was submitted by the petitioner to the respondents seeking exemption from passing the departmental examination on medical grounds. Along with this application, he submitted a medical certificate issued by the Civil Surgeon, Patiala, showing his disability to the extent of 45%. It was further stated that the petitioner, according to the rules was required to pass the departmental examination, in accounts, with higher standard, within two years, from the date of his promotion, but he failed to do so. He was given six chances to appear in the departmental examination. He appeared in the departmental examination held in the months of April, 2001, July 2001 and April 2002 and earned 15,22 and 42 marks respectively, and thus, could not

pass the same with higher standard. In the first instance, he tried to pass the examination, but when he could not pass the same, he submitted an application dated 24.2.2003 referred to above, seeking exemption from passing the same. The application was considered by respondent No.2, and his probation period was extended for one year i.e. upto 6.5.2004 vide order dated 22.4.2003. It was further stated that, on examination of the matter it was found that the post of the Assistant Registrar,Cooperative Societies, is important, as he is In-charge of the Cooperative Societies, in the Sub-Division, and has to supervise the same, besides presiding over the Court work. In this view of the matter, the application for exemption from passing the examination, aforesaid, was rejected by the Cooperative Minister and the decision, in that regard, was duly conveyed to him vide letter dated 21.8.2003 (Annexure R-1 true translation where of is RT/1). The petitioner again submitted an application to respondent No.3, on which the Finance Minister passed the orders on 27.5.2004, that his request be acceded to. Since, the competent authority was respondent No.2, his request was sent to him. After examining the request of the petitioner, by respondent No.2, the matter was referred to the Minister In-charge for final orders. The Minister passed an order dated 4.10.2004 to the effect, that in the light of the provisions of the Service Rules, the petitioner could not be allowed exemption. However, on the basis of fresh medical certificate dated 29.8.2004 submitted by the petitioner, he was given one more additional chance, to pass the departmental examination, in accounts. This decision was duly conveyed to him, vide order dated 18.10.2004.

3. It was further stated that since the petitioner failed to pass the departmental examination, in accounts, with higher standard, even

after the expiry of three years, from the date of his promotion, he was reverted vide order dated 29.7.2004 (Annexure P-7) as per the Rules ibid. It was further stated that there was no question of affording an opportunity of hearing, to the petitioner, before passing the order of his reversion, according to the Rules ibid as it was not punitive in nature.

4. We have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

5. The sole point, that falls for consideration, in the instant writ petition is as to whether the order dated 29.7.2004 (Annexure P-7) waspassed by the respondents in accordance with the relevant Rules or not. Admittedly, the petitioner was initially appointed as Inspector Cooperative Societies vide order dated 11.4.1975 (Annexure P-1). There is no dispute, between the parties, that he was promoted as an Assistant Registrar Cooperative Societies vide order dated 4.5.2001 (Annexure P-2). It is the acknowledged position that the petitioner is governed by the Punjab State Cooperative Service Class II Rules, 1958. Rules 8, 9 and 17 of the Rules ibid, are extracted hereunder, for facility of reference:-

> *"8. Appointment by promotion and qualifications of such candidates.*
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> *a) Appointment to the service by promotion from State Service, Class-III, shall be made strictly by selection and no member of the State Service, Class III, shall be deemed to have had his promotion with held by reason of not being selected, for such appointment, nor shall he have any claim to such appointment as of right.*
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> *b) No member of the State Service, Class-III shall be eligible for promotion to the Service unless he has been duly approved by Government, as a candidate, and included in the list of such candidates, maintained by the*

Registrar.

9. PART II Conditions of Service.

Training and Departmental examination of directly appointed recruits.

a) A candidate selected for direct appointment to the Service, shall undergo a course of training for two years before being appointed to the service and shall pass such departmental examination as may be prescribed by Government but when a member of the State Service Class III, has been selected for a post to be filled by direct recruitment the period of training may, if Government thinks fit, be reduced by a period not exceeding the number of years he has worked as inspector.

Not withstanding any thing contained in Clause (a) above every member of the Service shall unless exempted by the Government shall pass by the higher standard departmental examination in accounts from time to time prescribed by Government for members of the service, within two years, from the date of his appointment to the Service.

Provided that if a member of the service is unable to pass the examination, within the probationary period of two years, owing to illness, or the exigencies of service, government may extend the period within which the member shall so pass the examination.

Provided further that should a member fail to pass the examination within the period of probation or such extended period, he may be discharged from the service if recruited direct or reverted to his former post if recruited otherwise.

Note: Permanent Inspectors of Cooperative Societies will be eligible to appear in the examination and if they qualify will not be required to qualify again on their appointment to the Service.

17. Power to relax rules:-

Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may by order, dispense with or relax the requirements of the rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in an equitable manner."

6. A plain reading of the Rule 9 of the Rules ibid clearly reveals that every member of the service, unless exempted by the Government shall pass by the higher standard departmental examination, in accounts, from time to time prescribed by it (Government) within two years, from the date of his appointment, to the service. According to the first proviso, engrafted to this rule, if a member is unable to pass the examination, within the probationary period of two years, owing to illness or the exigencies of service, the government may extend the period within which he shall so pass the examination. Further, according to the second proviso engrafted to the said Rule, in case a member fails to pass the examination, within the period of probation, or such extended period, he may be discharged from service if recruited direct, or reverted to his former post, if recruited otherwise. In the instant case, admittedly, the petitioner did not pass the departmental examination in accounts, by higher standard, within the period of probation of two years from the date of his promotion. He submitted medical certificate dated 20.3.2001 (Annexure P-3) from the Civil Surgeon, Patiala which is extracted as under:-

"I hereby certify that I have examined Harjit Singh

Dhillon s/o Sh. Amar Singh resident of 9-C, Model Town, Patiala, Tehsil Patiala, Distt. Patiala whose signature/thumb impression appear below. He is 49 years old as per his statement, and he is a permanently disabled from Left leg movement affected. Left hip and lt. knee painful, restricted movement, disability is 45% for life and his disability is not less that 40% as per definition in the persons with disabilities/Equal opportunities, protection of Rights and full participation Act, 1955."

7. In view of the said medical certificate, his period of probation was extended by one year, and he was directed to pass the aforesaid examination, within that period. He even could not pass the same within the extended period of probation. The medical certificate (Annexure P-3) only shows that the petitioner was suffering from disability of left leg movement, left hip and left knee. His disability was assessed at 45%. The petitioner was not at all, suffering from disability of his hand or arm. He was to write his papers, with hand, and not with leg. In the written statement, it was specifically averred by the respondents, that the petitioner appeared in the aforesaid examination, six times, but he failed to succeed in the same. He was also given an additional chance, to pass the said examination, but he failed. Even the certificate dated 29.8.2004 (Annexure P-8) lateral in date, than the impugned order dated 29.7.2004 issued by a private medical practitioner did not indicate that the petitioner was completely unable to write with his left hand, as he claimed himself to be a left hander. In these circumstances, in my opinion, the competent authority, was right in passing the order dated 29.7.2004 (Annexure P-7) reverting the petitioner from the post of Assistant Registrar Cooperative Societies under Rule 10(3) of the Rules ibid, and under Rule 7(2) of the Punjab Civil

Services (General and Common Conditions of Service) Rules, 1994, to the post of Inspector. Since, this order was not passed by way of punishment, but only in accordance with the relevant Rules, governing the service condition of the petitioner, as he failed to pass the departmental examination in accounts even during the extended period of probation with higher standard, he was not required to be afforded an opportunity of being heard, before passing the same. The order dated 29.7.2004 (Annexure P-7), was passed, in accordance with the relevant Rules and is not liable to be quashed.

8. It was, however, contended by the Counsel for the petitioner that the petitioner was discriminated vis-a-vis the similarly situated persons. The contention of the learned Counsel for the petitioner, in this regard, does not appear to be correct. One Darshan Singh, who was promoted from Superintendent to Assistant Registrar was exempted from passing the aforesaid examination vide order dated 7.5.1999 (Annexure P-6) by the competent authority. It is evident, from the said order, that said Darshan Singh was suffering from the disease 'Carebeller Atexia' The disease with which Darshan Singh was suffering, affected his entire body as also incapacitated him from writing and, thus, he was unable to take the examination. Thus, keeping in view his physical movements, and his sympathetic circumstances, he was granted exemption by granting relaxation under Rule 17 of the Rules ibid. There is another order dated 29.5.2001 (Annexure P-5), vide which the competent authority, exempted another Darshan Singh, who was promoted from Superintendent to Assistant Registrar, from passing the departmental examination in accounts with higher standard as his medical report dated 17.11.2000 revealed that

he was unable to write fully. It was in these circumstances that the order dated 29.5.2001, referred to above, was passed. The cases of both the officers, in the name of Darshan Singh, referred to above, were not similar and identical, to the case of the petitioner. It, therefore, cannot be said that the petitioner was discriminated vis-a-vis the similarly situated persons. The contention of the learned counsel for the petitioner, being without merit, must fail, and the same stands rejected.

9. For the reasons recorded, hereinbefore, the instant writ petition is dismissed with no order as to costs.

(SHAM SUNDER)
JUDGE

November 26, 2007 **(J. S. KHEHAR)**
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